

This letter discusses Energy Assistance Charges and Renewable Energy Resources and Coal Technology Development Assistance Charges. See 305 ILCS 20/13 and 20 ILCS 687/6-5. (This is a GIL.)

May 31, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 15, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC will begin retailing/selling electricity (not natural gas) to C&I (commercial/industrial customers) sometime during the 3rd qtr of 2005, with potential residential sales in the future. ABC is located in CITY/STATE and is qualified to do business in Illinois.

Although we have received helpful advice and assistance from various departments we have contacted in Springfield, we need to assure ourselves we understand the complexities and nuances of the Electricity Excise Tax, the RPU-6 and the annual Energy Efficiency Fund Program in order to comply with Illinois regulations.

Electricity Excise Tax: RPU-13

ABC will sell electricity at retail to C&I customers. Is ABC responsible for remitting and collecting the Electricity Excise Tax? It's our understanding the local utility will collect and remit that particular tax since by definition; they are the last delivering supplier. If the utility is responsible for remitting the tax is there a process by which ABC would alert the utility to begin collecting the excise tax?

Assistance Charges Return for Electricity Distributors: RPU-6

Since it appears the utility will collect the excise tax, will the utility also bill and collect the Assistance/Energy Charges to be remitted on the RPU-6 or is ABC responsible for collecting and remitting these charges?

The instructions state 'All electric utilities and all alternative retail electric suppliers, except municipal electric utilities and electric cooperatives, must collect the assistance charges.'

The definition for an Alternative Retail Electric Supplier is '.....a corporation ..that offers electric power or energy for sale.....'

Our company by definition appears to be an ARES. Can the Department please advise us if ABC is responsible for collecting the charge? If the utility by default is responsible for remitting the charges, is there a process by which ABC would alert the utility to begin collecting this charge?

Energy Efficiency Program: RPU-10

Is our company liable for contributing to the Energy Efficiency Program that is submitted annually on an RPU-10? It's our understanding DCCA bills for this charge yet the charge is remitted to the Illinois Department of Revenue. If ABC is responsible for some piece of the annual charge, who notifies us? If we are responsible for this charge, is there any advance notice so we can accrue for the charge on our books and records?

The Department's assistance regarding our questions is greatly appreciated.

DEPARTMENT'S RESPONSE

For information regarding the Electricity Excise Tax Law, we refer you to the Department's regulations at 86 Ill. Adm. Code Part 511. The regulations at sections 511.100 (Definitions), 511.110 (Imposition of Tax), 511.200 (Collection of Tax by Delivering Supplier), and 511.530 (Delivering Supplier Return) may be especially helpful.

The Energy Assistance Act is set forth at 305 ILCS 20/1 et seq. The Energy Assistance Charge is a charge collected by each public utility, electric cooperative, as defined in Section 3.4 of the Electric Supplier Act, and municipal utility, as referenced in Section 3-105 of the Public Utilities Act, that is engaged in the delivery of electricity or the distribution of natural gas within the State of Illinois upon each of its customer accounts. Please note that municipal electric utilities and electric cooperatives may elect not to assess the Energy Assistance Charge, but then cannot be reimbursed under the Low-Income Energy Assistance Program. Section 13 of the Energy Assistance Act of 1989 specifically provides that the Energy Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service. See 305 ILCS 20/13.

If your business is not a public utility, electric cooperative, or municipal utility as those terms are used in 305 ILCS 20/13, or if it is one of these entities, but does not engage in the delivery of electricity or the distribution of natural gas within the State of Illinois, then it does not have to impose the Energy Assistance Charge. For further information regarding who must collect this charge, we refer you to the Department's regulation, "Renewable Energy Resources and Coal Technology Development Assistance Charge" at 86 Ill. Adm. Code Part 516 and to the Department's Information Bulletin, FY 98-21, "Illinois Restructures Invested Capital Tax, and Imposes Electricity Distribution Tax and Energy Assistance Charge."

The Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 is set forth at 20 ILCS 687/6-1 et seq. The Renewable Energy Resources and Coal Technology Development Assistance Charge is a charge collected by electric and gas utilities, whether owned by investors, municipalities or cooperatives, and alternative retail electric suppliers from each of its customer accounts. Municipal electric utilities and electric cooperatives may elect not to charge the Renewable Energy Resources and Coal Technology Development Assistance Charge. If a municipal electric utility or electric cooperative does not assess this charge, its customers are not eligible for the Renewable Energy Resources Program. Similar to the Energy Assistance Charge provisions described above, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 specifically provides that the Renewable Energy Resources and Coal Technology Development Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service. See 20 ILCS 687/6-5.

If your business is not an electric or gas utility, whether owned by investors, municipalities or cooperatives, or an alternative retail electric supplier, it does not have to impose the Renewable Energy Resources and Coal Technology Development Assistance Charge. For further information regarding who must collect this charge, we refer you to the Department's regulation, "Renewable Energy Resources and Coal Technology Development Assistance Charge" at 86 Ill. Adm. Code Part 517 and to the Department's Information Bulletin, FY 98-28, "Illinois Imposes Renewable Energy Resources and Coal Technology Development Assistance Charge."

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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